[JOINT COMMITTEE PRINT]

EXPLANATION OF PROPOSED ESTATE AND GIFT TAX TREATY BETWEEN THE UNITED STATES AND THE UNITED KINGDOM

PREPARED FOR THE USE OF THE

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INTRODUCTION

This pamphlet provides an explanation of the proposed estate and gift tax treaty between the United States and the United Kingdom of Great Britain and Northern Ireland ("United Kingdom"). The proposed treaty was signed by the United States and the United Kingdom on October 19, 1978 and has been submitted to the Senate for advice and consent to its ratification. A public hearing on the proposed treaty is scheduled by the Senate Committee on Foreign Relations for June 6, 1979.

The portion of the proposed treaty dealing with estate taxation is intended to replace the existing estate tax treaty between the United States and the United Kingdom, which has been in force since July 25, 1946. There is no existing gift tax treaty between the two countries.

The first part of the pamphlet is a summary of the principal provisions of the proposed estate, inheritance and gift tax treaty. This is followed by a detailed, article-by-article explanation of the treaty.

I. SUMMARY

The basic thrust of the proposed estate and gift tax treaty between the United States and the United Kingdom is to alleviate double taxation on the estates and gifts of citizens and domiciliaries of both countries by modifying the jurisdictional rules of estate and gift taxation with respect to these individuals. The treaty modifies these rules in two ways.

First, an individual's country of domicile has primary tax jurisdiction on the estates and gifts of its domiciliaries. However, real property and assets of a permanent establishment or fixed base which are located in the other country ("situs country") are subject to primary tax jurisdiction in the situs country.

The second modification is that in situations where both countries under their own domestic law consider an individual to be a domiciliary, the individual will be treated as having only one country of domicile for purposes of the taxes covered by the treaty. The treaty sets forth several criteria to determine which country is the country of domicile.

Estate and gift taxation

The United States imposes its estate tax on estates of individuals who were U.S. citizens or U.S. domiciliaries at the time of their death, and on assets of nondomiciliaries where the assets are situated in the United States at the time of their death. The United States imposes its gift tax on gifts made by U.S. citizens and U.S. domiciliaries regardless of where the property which is the subject of the gift is located, and on gifts made by nondomiciliaries where the property which is the subject of the gift is tangible property situated in the United States at the time of the gift.

The United Kingdom imposes a capital transfer tax on estates of individuals who were domiciled in the United Kingdom at the time of their death or on the assets of persons not domiciled in the United Kingdom where the assets were situated in the United Kingdom at the time of their death. The U.K. capital transfer tax is also imposed on gifts made by persons who were domiciled in the United Kingdom at the time the gift was made and on gifts made by persons not domiciled in the United Kingdom where the property was situated in the United Kingdom at the time of the gift.

Causes of double taxation

It is taxation on worldwide assets that creates the potential for double taxation. Double taxation usually occurs in situations where a decedent was either domiciled in both countries or was domiciled in one country and owned property located in another country.

Since each country has its own definition of what constitutes domicile in that country, it is possible that the definition of domicile in the two countries could overlap and a person could thus be considered a

domiciliary of both countries. As such, his estate would be subject to worldwide taxation by both countries.

When the decedent is considered domiciled in only one country but owned property in the other country at the time of his death, that property is subject to tax in the situs country regardless of the decedent's domicile. Thus, the country of domicile will tax the property, since it is included in the worldwide assets of the estate, and the situs country will tax the property because it was located within its boundaries at the time of the decedent's death.

In both of these situations, unless one of the two countries gives up its right to tax the property or allows a credit for the estate taxes paid to the other country, the estate will be subject to double taxation.

A similar situation exists for gifts where the donor is a domiciliary of both countries or a domiciliary of one country and the property which is the subject of the gift is situated in another country. As in the case of estates, the country of domicile will tax the gifts made by its domiciliaries on a worldwide basis and the situs country will tax those same gifts to the extent the property is located within its boundaries. Again, unless one of the countries gives up its right to tax the transfer or allows a credit for the taxes paid to the other country, the gift will be subject to double taxation.

Elimination of double taxation

The proposed treaty will alleviate double taxation on gifts and estates of U.S. citizens and domiciliaries and U.K. domiciliaries by permitting each asset held by an estate or each gift to be subject to primary tax jurisdiction in only one of the two countries. This is accomplished in the treaty by allowing both countries to impose their tax but requiring one of the countries to allow a credit against its tax for the taxes paid to the other country. In most situations, the treaty allows the country of domicile to assert primary tax jurisdiction. However, the situs country is given a priority of taxation in the case of real property and business property (i.e., assets of a permanent establishment or a fixed base) which are located in that country.

The treaty provides that the domicile of an individual will be determined separately under the laws of each country. If only one of the two countries treats the individual as a domiciliary under its domestic laws, then that is the country of domicile for purposes of the treaty. However, if both countries treat the individual as a domiciliary under their domestic laws, then the treaty sets forth an extensive set of rules to determine the individual's domicile for purposes of establishing primary tax jurisdiction under the treaty. The approach used in this set of rules is to recognize that where an individual domiciled in both countries is a national of one of the two countries and has been resident for only a limited period of time in the other country, his ties with the country of residence are not sufficient to justify the assertion of primary tax jurisdiction by that country. However, where an individual has been domiciled in both countries for a substantial period of time, the country with which he has his closest ties (such as the place of his permanent home) has the greater claim to domicile and, thus, primary tax jurisdiction will generally be allowed to that country.

II. EXPLANATION OF PROPOSED TAX TREATY

A detailed article-by-article explanation of the proposed U.S.–U.K. estate and gift tax treaty is presented below.

Article 1. Estates and gifts covered

The proposed treaty will apply to any person who is subject to the U.S. gift or estate tax, including the tax on generation-skipping transfers, or the United Kingdom caiptal transfer tax. Thus, the proposed treaty will apply, in general, to estates of decedents who were domiciled in the United Kingdom at the time of their death and to estates that are subject to tax in the United States because the decedent was a citizen or domiciliary of the United States at the time of his death. The treaty will also apply to estates of decedents who had property situated in the United States or the United Kingdom at the time of their death.

With respect to gifts, the treaty applies to gifts made while the donor was a domiciliary of the United Kingdom and to gifts which are subject to tax in the United States because the donor was a citizen or domiciliary of the United States when the gift was made. The treaty also applies to gifts of property where the property was situated in the United States or the United Kingdom at the time of the gift.

Article 2. Taxes covered

The proposed treaty applies to the U.S. estate tax, gift tax, and the tax on generation-skipping transfers.

The United States imposes its estate tax on the worldwide assets of estates of persons who were citizens or domiciliaries of the United States at the time of their death, and on property belonging to nondomiciliaries of the United States which is located in the United States at the time of their death. The U.S. gift tax is imposed on all gifts made by U.S. citizens and domiciliaries, and on gifts of property made by nondomiciliaries where the property is located in the United States at the time of the gift.

The U.S. tax on generation-skipping transfers was enacted in 1976 to prevent the transfer of the use of property among generations of the transferor's descendents without the payment of gift or estate taxes. In general, the tax on generation-skipping transfers is imposed when property passes through a trust from persons of one generation to persons of another generation and the transfer is not otherwise subject to estate or gift tax.

The proposed treaty applies to the United Kingdom capital transfer tax. The capital transfer tax is imposed on the worldwide assets of persons domiciled in the United Kingdom at the time of their death, and on property of nondomiciliaries of the United Kingdom where the property is located in the United Kingdom at the time of such

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person's death. The capital transfer tax applies to all gifts made by persons domiciled in the United Kingdom, and to property of nondomiciliaries that is located in the United Kingdom at the time of the gift.

As is generally true in the case of other United States estate tax treaties, the proposed treaty does not apply to death or gift taxes imposed by state or local governments. In addition, the proposed treaty provides that it will apply to any substantially similar taxes on estates, inheritances and gifts that either country may subsequently impose. The competent authorities of both countries are required to notify each other in the case of any substantial changes in their estate, inheritance or gift tax laws.

Article 3. General definitions

The standard definitions generally found in most existing U.S. estate tax treaties are contained in the proposed treaty.

The United States is defined to mean the United States of America and specifically excludes U.S. possessions or territories. The United Kingdom means Great Britain and Northern Ireland.

Several provisions of the treaty are discussed in terms of "nationals." U.S. nationals are defined to be U.S. citizens. A United Kingdom national is any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided that in either case he had the right of abode in the United Kingdom at the time of death or the time of the gift.

The proposed treaty also contains the standard provision that undefined terms are to have the meaning which they have under the applicable tax laws of the country applying the treaty. In addition, it is further provided (*Article 11*) that where a term is defined in a different manner by the two carriers, then the competent authorities of the two countries may establish a common meaning of the term in order to prevent double taxation or to further any other purposes of the proposed treaty.

Article 4. Fiscal domicile

The concept of domicile is important under the proposed treaty because the country of domicile has, under the treaty, primary tax jurisdiction on all property other than the property subject to situs taxation. The country of domicile is initially governed by the domestic laws of each country. However, in those situations where both countries would treat an individual as a domiciliary, the treaty sets forth rules for establishing the country of domicile for purposes of the taxes covered by this treaty.

The proposed treaty provides that a person will be a domiciliary of the United States if he is a "resident (domiciliary)" of the United States. Article 3(2) of the treaty states that terms not defined in the treaty are defined by the estate and gift tax law of the country to which the term applies. Since the term "resident," as it applies to U.S. persons, is not defined in the treaty, such term will be defined under the U.S. estate and gift tax law. Under the estate and gift tax regulations (sections 20.0–1(b)(1) and 25.2501–1(b) respectively) a resident of the United States is defined as a person who had his

domicile in the United States at the time of his death or at the time of the gift. The regulations go on to state that, "a person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accomplished by actual removal." Domicile for the U.S. estate and gift tax law is a matter of Federal law and it is not determined with reference to state law and it does not incorporate any presumption that the domicile of one spouse controls the domicile of the other spouse.

The treaty also states that a U.S. citizen who was domiciled in the United States at any time within the preceding three years will also be considered a U.S. domiciliary.

The treaty provides that a person will be a domiciliary of the United Kingdom if he was a U.K. domiciliary under general U.K. law or if he was treated as a U.K. domiciliary for purposes of the capital transfer tax. Under the capital transfer tax, a person is treated as a U.K. domiciliary if:

1. He was domiciled in the United Kingdom within three years preceding the date of death or the date the gift was made;
2. He was resident in the United Kingdom in not less than seventeen of the twenty income tax years which end with the income tax year in which the person died or in which the gift was made; or
3. He became, and has remained, a domiciliary of the Channel Islands or the Isle of Man, and he was a United Kingdom domiciliary immediately prior to that.

To provide relief from double taxation where the individual is considered domiciled in both countries, the proposed treaty provides a series of rules designed to establish a single country of domicile for the individual for purposes of the taxes covered by the treaty. The country so selected will then have the primary tax jurisdiction with respect to the worldwide estate of the decedent or with respect to his worldwide gifts, other than real property and assets of a permanent establishment or a fixed base situated in the other country. As described below, these rules are based on the concept that primary tax jurisdiction should be exercised either by the country of nationality, if the dual domicile individual has not been resident in the other country for a substantial period of time prior to his death or the making of the gift, or by the country in which he has his most significant contacts if that nationality test is not determinative.

If the person is determined to be a domiciliary of both countries, the proposed treaty provides a series of rules by which an exclusive domicile for the individual will be determined. Under the first of these rules, if the individual is a national of the United Kingdom and not the United States, and has been a resident of the United States for Federal income tax purposes in less than 7 years during the 10-year period ending with the date of death or the date of the gift, he will be considered a United Kingdom domiciliary. Conversely, if the individual is a U.S. national only and has been resident in the United Kingdom for less than 7 of the 10 income tax years of assessment which end with the

date of death or the date of the gift, he will be considered a U.S. domiciliary.

It is contemplated that this rule will resolve the great majority of dual domicile situations. However, if a dual domicile problem still remains after application of these rules, the proposed treaty provides four additional rules to determine domicile. The rules (applied in the order presented) provide that the individual will be considered domiciled in the country (1) in which he had a permanent home available to him, (2) in which his personal and economic relations were the closest (center of vital interests), (3) in which he had a habitual abode, or (4) in which he was a national. In cases where an individual's domicile cannot be determined by these tests, then the competent authorities of the countries are to settle the question by mutual agreement.

The proposed treaty does not treat certain residents of U.S. possessions as U.S. nationals or domiciliaries. These are individuals who acquired U.S. citizenship solely because they were citizens of a possession or because they were born in a possession or were residents of a possession. Under U.S. tax law (Code sec. 2209 and sec. 2501(c)), these individuals are not taxed by the United States on their worldwide estates and gifts, so protection against double taxation is generally unnecessary. Accordingly, the proposed treaty will not apply to estates or gifts of these individuals, unless it is applicable by reason of their being domiciled in the United Kingdom.

Article 5. Taxing rights

This article sets forth the general treaty rule that the country of domicile, as determined under the treaty, has the primary tax jurisdiction over the estates or gifts of its domiciliaries, other than the property specifically reserved for situs taxation. The proposed treaty generally provides that property, other than real property and assets of a permanent establishment or a fixed base, which is not located in the country of domicile may only be subject to tax in the country of domicile of the decedent or donor.

However, this rule does not apply if the domiciliary was a national of the other country. Since the United States imposes its tax on the basis of citizenship (the United Kingdom does not) as well as domicile, there is still the possibility of double taxation if an individual is a U.S. citizen and a U.K. domiciliary. The possibility of double taxation in this situation is alleviated under the tax credit structure discussed in Article 9.

The treaty provides a special rule for a person who is a national of only one of the countries but who is not a domiciliary of either country. Property, other than property subject to situs country taxation under the treaty, which belongs to such a person and which is subject to tax in the country of which he is a national will not be subject to tax in the other country. Thus, property situated in the United Kingdom of a U.S. citizen, who is not domiciled in the United States or in the United Kingdom, which is subject to tax in the United States will not be subject to tax in the United Kingdom unless it is real property or assets of a permanent establishment or fixed base located in the United Kingdom.

This article also provides special rules regarding trusts. The United States agrees not to impose a tax on generation-skipping transfers where the deemed transferor was a United Kingdom domiciliary and is not a U.S. national. Conversely, the United Kingdom will not impose a tax on property placed in a trust if the settlor was a U.S. domiciliary and was not a United Kingdom national. These rules do not limit the rules of situs country taxation under the treaty.

If the above rules of this article result in only one country having the right to impose a tax but that tax is not paid, the other country may impose its tax on the property within that country. However, if the tax is not paid because of a specific exemption, deduction, exclusion, credit or allowance, this rule will not apply.

This article provides that the competent authorities will determine the situs of property by mutual agreement in the case of property belonging to a person who was not domiciled in either country where the property was regarded by both countries as situated within its boundaries and thus subject to its tax.

Article 6. Immovable property (real property)

Under the proposed treaty, immovable property (real property) is one of two types of property over which the situs country has primary tax jurisdiction over the country of domicile. The other type is assets of a permanent establishment or fixed base (*Article 7*).

The determination of whether an item of property is immovable property (real property) is to be made under the laws of the country in which the property is located. Although U.S. law does not define "immovable property (real property)," that term for U.S. purposes is considered to mean real property. It is further provided that immovable property (real property) does not include claims secured by real property (such as mortgages).

Immovable property (real property) is specifically defined to include:

1. Property accessory to immovable property;
2. Livestock and equipment used in agriculture and forestry;
3. Rights to which the provisions of general law respecting landed property apply;
4. Usufruct of immovable property; and
5. Rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

This article also applies to the immovable property held by an enterprise or used for the performance of independent personal services.

Article 7. Business property of a permanent establishment and assets pertaining to a fixed base used for the performance of independent personal services

Under the proposed treaty, the second type of property owned by a nondomiciliary over which the situs country has primary tax jurisdiction is the business assets of such person's permanent establishment which is located in the situs country and the assets of a fixed base of such person which is situated in that country and is used for the performance of independent personal services. The real property of either

enterprise is to be taxed by the country in which it is situated, as provided in Article 6.

The proposed treaty contains a definition of the term "permanent establishment" which is similar to the definition found in recent U.S. income tax treaties. Generally, any fixed place of business through which a person engages in a trade or business is considered a permanent establishment. A fixed place of business generally includes an office, branch, factory, workshop, place of extraction of natural resources, and any building site or construction or installation project which exists for more than 12 months. This general rule is modified by providing that a fixed place of business which is used for certain activities specified in the treaty will not be considered a permanent establishment. These activities include for example, the warehousing of goods for purposes of storage, display, or delivery, or for processing by another person. They also include the maintenance of a fixed place of business solely for the purpose of purchasing merchandise or collecting information.

The proposed treaty also provides that a person will be deemed to have a permanent establishment in a country if he had an agent in that country who had and habitually exercised a general contracting authority (other than for the purchase of goods or merchandise) in that country. This agency rule does not apply, however, if the agent is a broker, general commission agent, or any other agent of an independent status, provided the agent is acting in the ordinary course of his business.

A company will not be held to have a permanent establishment in one of the countries solely because it controls or is controlled by a company which is a resident of that country.

Article 8. Deductions, exemptions, etc.

This article provides that in computing the tax imposed by either country, deductions will be allowed in keeping with the law in force in that country at the time.

Under this article, if property is passed to a spouse by a donor or decedent who is a U.K. national or domiciliary and if such property is subject to tax in the United States, then the spouse is entitled to a marital deduction in computing his U.S. tax. The marital deduction is limited to the amount that would have been allowed as a marital deduction if the decedent or donor had been domiciled in the United States and the U.S. gross estate was limited to the amount of property which is subject to tax in the United States.

The United Kingdom allows under the treaty a similar benefit to spouses of U.S. nationals or domiciliaries. In this case, the United Kingdom allows an exemption equal to 50 percent of the value of the property where a decedent or donor is a U.S. national or domiciliary and transfers property to his spouse, provided that his spouse is not domiciled in the United Kingdom and that the transfer would have been wholly exempt under U.K. domestic law if the spouse had been domiciled in the United Kingdom.

The United Kingdom also allows an exemption for transfers to a trust, upon the death of the decedent, in which the spouse who is a U.S. national or domiciliary. If the decedent is a U.K. domiciliary and the spouse is entitled to an immediate interest in possession of

property that would have been wholly exempt if such spouse had been a U.K. domiciliary, then 50 percent of the value transferred to the spouse will be exempt from taxation in the United Kingdom. Two further conditions to this exemption are that the trustees of all trusts in which the decedent had an interest must elect to be included in this provision and if the spouse subsequently becomes indefeasibly entitled to any of the trust property the extemption will be revoked as to that property.

This article also provides that where property of a United Kingdom national, who was not a U.S. national or domiciliary, is subject to U.S. estate taxation, the U.S. tax on that property will not be greater than the U.S. tax which would have been imposed on the decedent's worldwide assets if he had been a U.S. domiciliary at his death.

Article 9. Credits

The proposed treaty provides a series of rules to determine the amount of tax credits which will be allowed by each country in cases where a person's property is taxed by both countries. Those provisions constitute rules for determining the priority of the countries' rights to tax property in the sense that the country which grants a credit for the other country's tax, in effect, is exercising a secondary, rather than a primary, taxing jurisdiction. These credit rules, in conjunction with the limitations imposed by the proposed treaty on situs country taxation and on the ability of a country to tax the worldwide estate of a decedent, constitute the approach employed by the proposed treaty to avoid double taxation where both countries tax an individual's property.

In general, the proposed treaty provides for two credit rules to alleviate double taxation. The first credit rule provides that the country in which a person was domiciled, or of which he was a citizen, will allow a credit for the taxes imposed by the other country on that person's real property and business property of a permanent establishment or fixed base which is situated in that other country. The country of domicile or citizenship will allow this credit for taxes attributable to property situated in the other country whether the other country imposes its tax on the basis of situs jurisdiction or imposes it on the worldwide estate of the decedent on the basis of his citizenship or domicile in that country.

In cases where both countries tax the estate of an individual on a worldwide basis because he was a citizen of one country and a domiciliary of the other country, the second credit rule of the proposed treaty generally provides for the allowance of an additional tax credit by the country in which the decedent was not domiciled. Thus, the nondomiciliary country, which is the country of citizenship, yields primary taxing jurisdiction to the country of domicile. However, if the tax of the country of citizenship exceeds the tax of the country of domicile the excess will be collected by the country of citizenship.

In resolving double taxation on trusts, the two countries use a credit mechanism almost identical to the one used for nontrust transfers. Where both countries impose a tax on a trust's real property and assets of a permanent establishment or fixed base which is located in one of the countries, the nonsitus country will allow a credit for

taxes paid to the situs country on that property. On all other property, where the transferor was a U.S. domiciliary, the United States will have the right of primary tax jurisdiction over the property, and the United Kingdom will allow a credit against its tax for the U.S. taxes paid on such property. In situations where the transferor was a U.K. domiciliary, the United Kingdom will have the right of primary tax jurisdiction over such other property and the United States will allow a credit for the U.K. taxes paid on such property.

The total amount of credits which one country will allow under the convention is limited to that portion of its tax which is attributable to all property for which a credit is allowable under the treaty. In determining this limitation, properties are not to be considered on an individual basis, but rather are to be aggregated.

As is the case under existing U.S. estate tax treaties, the proposed treaty further provides that credits allowed by a country under its domestic law against its tax are to be subtracted from the gross tax imposed by that country in order to determine the tax imposed by it which is creditable against the other country's tax or against which the other country's tax may be credited. The credit cannot exceed the portion of the tax paid which is attributable to the property with respect to which the credit is given.

A credit will not be finally allowed under the proposed treaty until the tax for which the credit is claimed has been paid. The proposed treaty allows a taxpayer to file a claim for credit or refund within 6 years from the date of death or the date of the gift, or within one year from the last day a tax (for which a credit is given) was due, whichever comes later. The competent authorities of the two countries may extend this time limit where the final determination of taxes (for which a credit is claimed) has been delayed.

Article 10. Non-discrimination

This article provides that one country will not impose more burdensome taxation on certain specified persons and entities of the other country than it would impose on its own similarly situated persons and entities. The parties covered are nationals of the other country, permanent establishments of enterprises of the other country, and enterprises owned or controlled in whole or in part by residents of the other country.

This article generally does not restrict the right of the United States to tax a United Kingdom national who is not domiciled in the United States as a nonresident alien under its law. It also does not require either country to grant to nondomiciliaries personal allowances, reliefs, and reductions that such country grants to its domiciliaries.

Articles 11 and 12. Administrative provisions

The proposed treaty contains various administrative provisions which are generally found in other U.S. tax treaties. In general, the proposed treaty provides—

(1) For consultation and negotiation between the competent authorities of the two countries to resolve differences arising in the interpretation or application of the proposed treaty and also to resolve claims by taxpayers that they are being subjected to taxation contrary to the proposed treaty;

(2) For the exchange between the countries of legal information and information necessary to carry out the provisions of the proposed treaty or the tax laws of one of the countries, insofar as its taxation is in accordance with the proposed treaty, or to prevent fraud or fiscal evasion with respect to the taxes covered by the proposal treaty.

Any information which is exchanged shall be treated as secret and shall not be disclosed to anyone other than persons involved in assessment, enforcement, collection or prosecution in respect of the taxes which are the subject of this treaty. Also, no information will be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

Article 13. Effect on diplomatic and consular officials and domestic law

The proposed treaty provides that its provisions are not to affect the fiscal privileges which diplomatic and consular officials enjoy under the general rules of international law or the provisions of special agreements.

The proposed treaty specifically provides that it will not restrict in any manner any exclusion, exemption, deduction, credit or other allowance which is, or will be, enacted under the laws of either country. Therefore, the treaty will not be imposed to the detriment of any taxpayer.

Article 14. Entry into force

The proposed treaty will enter into force on the 31st day following the date on which the instruments of ratification are exchanged. With certain limited exceptions, the existing treaty will terminate on the date this treaty enters into force. Where an individual dies before March 27, 1981, and the existing treaty would afford a greater relief from taxes than the proposed treaty for certain gifts or transfers in trust made before March 27, 1974, the provisions of the existing treaty will apply in the United Kingdom.

Article 15. Termination

The proposed treaty will continue in force indefinitely but either country may terminate it as of the close of any calendar year which ends at least 5 years after the convention enters into force. The treaty will terminate on the date specified in the notice but not earlier than 6 months after the notice was given. However, the treaty will continue to apply to any estates or gifts which come under the jurisdiction of this treaty before it was terminated.

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